

Message

**From:** Kupchan, Simma [Kupchan.Simma@epa.gov]  
**Sent:** 11/2/2018 2:34:19 PM  
**To:** Hurl, Kathy [Hurl.Kathy@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]  
**CC:** Calli, Rosemary [Calli.Rosemary@epa.gov]  
**Subject:** RE: Follow-ups on two Florida documents

Emailing David now.

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

-----Original Message-----

**From:** Hurl, Kathy  
**Sent:** Friday, November 2, 2018 8:22 AM  
**To:** Hicks, Matt <Hicks.Matthew@epa.gov>  
**Cc:** Calli, Rosemary <Calli.Rosemary@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Subject:** Re: Follow-ups on two Florida documents

Good morning everyone. Just checking in on the status of these responses and the final language and rationale so I can keep my mgt updated. Thanks

Sent from my iPhone

> On Nov 1, 2018, at 6:37 PM, Hicks, Matt <Hicks.Matthew@epa.gov> wrote:  
>  
> That insert ("or retained waters") will be part of the proposed revisions we provide DEP.

> -----Original Message-----

> **From:** Calli, Rosemary  
> **Sent:** Thursday, November 1, 2018 6:35 PM  
> **To:** Hurl, Kathy <Hurl.Kathy@epa.gov>; Hicks, Matt  
> <Hicks.Matthew@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>  
> **Subject:** RE: Follow-ups on two Florida documents

## Ex. 5 Deliberative Process (DP)

> -----Original Message-----

> **From:** Hurl, Kathy  
> **Sent:** Thursday, November 1, 2018 6:00 PM  
> **To:** Hicks, Matt <Hicks.Matthew@epa.gov>; Kupchan, Simma  
> <Kupchan.Simma@epa.gov>  
> **Cc:** Calli, Rosemary <Calli.Rosemary@epa.gov>  
> **Subject:** Re: Follow-ups on two Florida documents

> So I'm sorry, but I'm not sure what language we are suggesting go forward to David F.

## Ex. 5 Deliberative Process (DP)

> sorry, I have to **Ex. 6 Personal Privacy (PP)** I can't work on this more tonight.

> From: Hicks, Matt  
> Sent: Thursday, November 1, 2018 5:29 PM  
> To: Hurlid, Kathy; Kupchan, Simma  
> Cc: Calli, Rosemary  
> Subject: RE: Follow-ups on two Florida documents

## Ex. 5 Deliberative Process (DP)

>  
> From: Hurlid, Kathy  
> Sent: Thursday, November 1, 2018 5:23 PM  
> To: Kupchan, Simma <Kupchan.Simma@epa.gov>  
> Cc: Calli, Rosemary <Calli.Rosemary@epa.gov>; Hicks, Matt  
> <Hicks.Matthew@epa.gov>  
> Subject: Re: Follow-ups on two Florida documents

## Ex. 5 Deliberative Process (DP)

> Sent from my iPhone  
>  
> On Nov 1, 2018, at 5:17 PM, Kupchan, Simma <Kupchan.Simma@epa.gov<mailto:Kupchan.Simma@epa.gov>> wrote:  
> I will tell him we think

### Ex. 5 Deliberative Process (DP)

> Simma Kupchan  
> EPA Office of General Counsel  
> Water Law Office  
> WJC North Building # 7426Q  
> 202-564-3105

>  
> From: Fotouhi, David  
> Sent: Thursday, November 1, 2018 5:16 PM  
> To: Kupchan, Simma  
> <Kupchan.Simma@epa.gov<mailto:Kupchan.Simma@epa.gov>>  
> Cc: Neugeboren, Steven  
> <Neugeboren.Steven@epa.gov<mailto:Neugeboren.Steven@epa.gov>>;  
> Wehling, Carrie  
> <Wehling.Carrie@epa.gov<mailto:Wehling.Carrie@epa.gov>>  
> Subject: RE: Follow-ups on two Florida documents

## Ex. 5 AC/DP

>  
> David Fotouhi  
>  
> Principal Deputy General Counsel  
> Office of General Counsel  
> U.S. Environmental Protection Agency  
> Tel: +1 202.564.1976  
> fotouhi.david@epa.gov<mailto:fotouhi.david@epa.gov>

>  
> From: Kupchan, Simma  
> Sent: Thursday, November 1, 2018 4:02 PM  
> To: Fotouhi, David  
> <Fotouhi.David@epa.gov<mailto:Fotouhi.David@epa.gov>>  
> Cc: Neugeboren, Steven  
> <Neugeboren.Steven@epa.gov<mailto:Neugeboren.Steven@epa.gov>>;  
> Wehling, Carrie  
> <Wehling.Carrie@epa.gov<mailto:Wehling.Carrie@epa.gov>>  
> Subject: Follow-ups on two Florida documents

> David,  
>  
> Thank you very much for your input on the proposed changes to FL's rules. R4 will incorporate all of  
your proposed edits, but just wanted to propose one alternative edit to the "material permit  
modification" paragraph, in response to a question you raised. Please see below.  
>  
>  
> Stakeholder-proposed language:

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

> David asked:

## Ex. 5 AC/DP

> New proposed language:

# Ex. 5 Deliberative Process (DP)

> Could you please let us know if you are comfortable with R4's revised proposed approach, or if you have concerns about it? Thank you very much for your continued attention to this matter.

>  
> Simma Kupchan  
> EPA Office of General Counsel  
> Water Law Office  
> WJC North Building # 7426Q  
> 202-564-3105  
>  
> From: Fotouhi, David  
> Sent: Tuesday, October 30, 2018 7:30 PM  
> To: Palmer, Leif <Palmer.Leif@epa.govmailto:Palmer.Leif@epa.gov>;  
> Leopold, Matt (OGC)  
> <Leopold.Matt@epa.govmailto:Leopold.Matt@epa.gov>  
> Cc: Glenn, Trey <Glenn.Trey@epa.govmailto:Glenn.Trey@epa.gov>;  
> Walker, Mary <walker.mary@epa.govmailto:walker.mary@epa.gov>;  
> Ashbee, Blake <ashbee.blake@epa.govmailto:ashbee.blake@epa.gov>;  
> Jenkins, Brandi  
> <Jenkins.Brandi@epa.govmailto:Jenkins.Brandi@epa.gov>; Gettle,  
> Jeaneanne <Gettle.Jeaneanne@epa.govmailto:Gettle.Jeaneanne@epa.gov>;  
> Hicks, Matt <Hicks.Matthew@epa.govmailto:Hicks.Matthew@epa.gov>;  
> Neugeboren, Steven  
> <Neugeboren.Steven@epa.govmailto:Neugeboren.Steven@epa.gov>;  
> Kupchan, Simma <Kupchan.Simma@epa.govmailto:Kupchan.Simma@epa.gov>;  
> McGill, Thomas <McGill.Thomas@epa.govmailto:McGill.Thomas@epa.gov>;  
> Zapata, Cesar <Zapata.Cesar@epa.govmailto:Zapata.Cesar@epa.gov>;  
> Wade, Alexis <Wade.Alexis@epa.govmailto:Wade.Alexis@epa.gov>; Ghosh,  
> Mita <Ghosh.Mita@epa.govmailto:Ghosh.Mita@epa.gov>  
> Subject: RE: proposed responses to FDEP's assumption questions  
>

> My comments and suggestions are tracked in the attached document. Please let me know if you would like to discuss.

>

> Best,

>

> David

>

> David Fotouhi

>

> Principal Deputy General Counsel

> Office of General Counsel

> U.S. Environmental Protection Agency

> Tel: +1 202.564.1976

> fotouhi.david@epa.gov<mailto:fotouhi.david@epa.gov>

>

> From: Palmer, Leif

> Sent: Thursday, October 25, 2018 7:02 PM

> To: Fotouhi, David

> <Fotouhi.David@epa.gov<mailto:Fotouhi.David@epa.gov>>; Leopold, Matt

> (OGC) <Leopold.Matt@epa.gov<mailto:Leopold.Matt@epa.gov>>

> Cc: Glenn, Trey <Glenn.Trey@epa.gov<mailto:Glenn.Trey@epa.gov>>;

> Walker, Mary <walker.mary@epa.gov<mailto:walker.mary@epa.gov>>;

> Ashbee, Blake <ashbee.blake@epa.gov<mailto:ashbee.blake@epa.gov>>;

> Jenkins, Brandi

> <Jenkins.Brandi@epa.gov<mailto:Jenkins.Brandi@epa.gov>>; Gettle,

> Jeaneanne <Gettle.Jeaneanne@epa.gov<mailto:Gettle.Jeaneanne@epa.gov>>;

> Hicks, Matt <Hicks.Matthew@epa.gov<mailto:Hicks.Matthew@epa.gov>>;

> Neugeboren, Steven

> <Neugeboren.Steven@epa.gov<mailto:Neugeboren.Steven@epa.gov>>;

> Kupchan, Simma <Kupchan.Simma@epa.gov<mailto:Kupchan.Simma@epa.gov>>;

> McGill, Thomas <McGill.Thomas@epa.gov<mailto:McGill.Thomas@epa.gov>>;

> Zapata, Cesar <Zapata.Cesar@epa.gov<mailto:Zapata.Cesar@epa.gov>>;

> Wade, Alexis <Wade.Alexis@epa.gov<mailto:Wade.Alexis@epa.gov>>; Ghosh,

> Mita <Ghosh.Mita@epa.gov<mailto:Ghosh.Mita@epa.gov>>

> Subject: FW: proposed responses to FDEP's assumption questions

> Importance: High

>

> Matt & David - as mentioned on today's OGC call we've worked out responses to FDEP's latest questions. Trey asked me to forward this to you for your thoughts.

>

> Matt Hicks' email below provides context.

>

> Leif Palmer

> Regional Counsel

> US EPA Region 4

> 61 Forsyth Street SW

> Atlanta, Georgia 30303

> (404) 562-9542

> Ex. 5 Personal Privacy (PP) (cell)

> This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

>

>

>

> From: Hicks, Matt

> Sent: Tuesday, October 23, 2018 5:51 PM

> To: Palmer, Leif <Palmer.Leif@epa.gov<mailto:Palmer.Leif@epa.gov>>

> Cc: Ghosh, Mita <Ghosh.Mita@epa.gov<mailto:Ghosh.Mita@epa.gov>>

> Subject: FW: proposed responses to FDEP's assumption questions

> Importance: High

>

> Leif,

>

> Here's EPA's proposed response to the two recent questions we received from DEP on Friday. These proposed responses were generated by the Region 4 team (Tom McGill level) after consulting with Simma (both issues) and Alexis (mitigation issue only) at OGC. DEP is waiting to hear from us before moving forward with their rulemaking so time is of the essence. More internal discussion is needed on the issue of incorporating retained waters list into EPA's Federal Register notice approving the state's program but that issue is not as time critical as the two below.

>

**Ex. 5 AC/DP**

# Ex. 5 AC/DP

> Please call me if you'd like to discuss further.  
>  
> Thanks,  
>  
> Matt  
>  
> From: McGill, Thomas  
> Sent: Tuesday, October 23, 2018 5:10 PM  
> To: Zapata, Cesar <Zapata.Cesar@epa.govmailto:Zapata.Cesar@epa.gov>>  
> Cc: Calli, Rosemary  
> <Calli.Rosemary@epa.govmailto:Calli.Rosemary@epa.gov>>; Purify,  
> Johnnie <Purify.Johnnie@epa.govmailto:Purify.Johnnie@epa.gov>>;  
> Hicks, Matt <Hicks.Matthew@epa.govmailto:Hicks.Matthew@epa.gov>>;  
> Ghosh, Mita <Ghosh.Mita@epa.govmailto:Ghosh.Mita@epa.gov>>; Kupchan,  
> Simma <Kupchan.Simma@epa.govmailto:Kupchan.Simma@epa.gov>>; Hurld,  
> Kathy <Hurld.Kathy@epa.govmailto:Hurld.Kathy@epa.gov>>; Allenbach,  
> Becky <Allenbach.Becky@epa.govmailto:Allenbach.Becky@epa.gov>>;  
> Nagrani, Kavita  
> <Nagrani.Kavita@epa.govmailto:Nagrani.Kavita@epa.gov>>; Laycock,  
> Kelly <Laycock.Kelly@epa.govmailto:Laycock.Kelly@epa.gov>>; Parker,  
> Christopher  
> <Parker.Christopher@epa.govmailto:Parker.Christopher@epa.gov>>  
> Subject: proposed responses to FDEP's assumption questions  
> Importance: High  
>  
> Cesar,  
>  
> As a follow-up to our conversation yesterday, FDEP would appreciate EPA's quick feedback on questions they asked during calls held with some of EPA's assumption team members on Oct 19 and 22nd. You'll recall that I forwarded you an email from Matt Hicks on Oct 19 regarding their basic questions, and we received additional clarification with FDEP staff in a call held on Oct 22. We understand that FDEP is awaiting EPA's feedback prior to proceeding with their Notice of Proposed Rulemaking and that FDEP would prefer EPA's feedback through a conversation instead of in writing.  
>  
> Attached is a document drafted by the EPA Assumption Team that includes: (1) FDEP's questions (highlighted in blue text); (2) proposed EPA responses (highlighted in yellow text); and (3) other information to provide background/context for FDEP's questions and/or the proposed responses. We would appreciate feedback from the RA and the senior leaders at OGC/OW as quickly as they can provide it before responding to FDEP.  
>  
> If you have any questions or need any additional information please let us know.  
>  
> Thanks.  
>  
> Tom